

<div>CITY OF SAN JOSÉ, CALIFORNIA</div> <div>Department of Planning, Building and Code Enforcement</div> <div>801 North First Street, Room 400</div> <div>San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number P.C. 09/10/03    Item: 3.d.
		File Number CP 03-050
		Application Type Conditional Use Permit
		Council District 4
		Planning Area Berryessa
		Assessor's Parcel Number(s) 244-09-023
PROJECT DESCRIPTION		Completed by: Caleb Gretton
Location: South side of Shadowtree Drive approximately 90 feet westerly of Coral Tree Place		
Gross Acreage: 1.47	Net Acreage: 1.47	Net Density: N/A
Existing Zoning: R-1-8 Residence	Existing Use: PG& E Tower	
Proposed Zoning: No change	Proposed Use: Existing use to remain with the addition of nine wireless communication antennas and associated equipment shelter	
GENERAL PLAN		Completed by: Caleb Gretton
Land Use/Transportation Diagram Designation Public Park and Open Space		Project Conformance: [ x ] Yes    [ ] No [ x ] See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: Caleb Gretton
North: Single-family detached residential	R-1-8 Residential Zoning District	
East: Single-family detached residential	R-1-8 Residential Zoning District	
South: Single-family detached residential	R-1-8 Residential Zoning District	
West: Single-family detached residential	R-1-8 Residential Zoning District	
ENVIRONMENTAL STATUS		Completed by: Caleb Gretton
[ ] Environmental Impact Report found complete [ ] Negative Declaration circulated on [ ] Negative Declaration adopted on		[x] Exempt [ ] Environmental Review Incomplete
FILE HISTORY		Completed by: Caleb Gretton
Annexation Title: Berryessa No.17		Date: December 03, 1971
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
[X] Approval [ ] Approval with Conditions [ ] Denial [ ] Uphold Director's Decision		Date: _____ Approved by: _____ [X] Action [ ] Recommendation
APPLICANT	OWNER	Easement Holder
Cingular Wireless	City of San José	PG&E
Attn: Luke Stamos	Neil Stone	Attn: Richard Sartini
2216 The Alameda	84 W. Santa Clara St, Ste 460	77 Beale St.
Santa Clara, CA 95050	San José, Ca. 95113	San Francisco, CA. 94105

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Caleb Gretton

Department of Public Works

See memo

Other Departments and Agencies

See attached memorandum from Police Department

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**GENERAL CORRESPONDENCE**

None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The developer, Cingular Wireless, is requesting a Conditional Use Permit to allow the installation of nine wireless communication antennas on an existing 101 foot tall PG&E transmission tower, and the placement of an equipment shelter under the existing tower, on a 1.47 gross acre site owned by the City of San José, within a PG&E easement in the R-1-8 Zoning district. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas located within a residential zoning district.

The project site is a long, flat narrow rectangular parcel owned by the City of San José within a residential neighborhood. PG&E has an easement over the land that allows them to operate and maintain a PG&E Tower with high-tension power lines on the site. The site is bounded by single-family detached residential uses on the north, south, east and west.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

**Project Description**

The proposed project consists of the installation of nine 4'6" tall wireless communication antennas on an existing 101-foot tall PG&E transmission tower. The proposed antennas will be installed at a height not to exceed 101 feet on the top of the existing utility structure. A 13' x 15' equipment shelter approximately eight feet in height, located directly under the existing tower, will contain the associated equipment cabinets. The equipment shelter will be enclosed by six-foot tall redwood fence that is consistent with the existing fencing on the property.

## **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act. The Environmental Quality Act Section 15303 class 3 exemption consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

## **GENERAL PLAN CONFORMANCE**

The subject property has a designation of Public Park and Open Space on the Transportation/Land Use Transportation Diagram. The subject property has a PG&E easement that allows for a High Voltage Power line on the subject property. The General Plan states that facilities and activities developed and operated wholly or partially by concessionaires and other private entities are also considered appropriate under this designation. Therefore, the PG& E Tower and the proposed Wireless Communication Antenna are consistent with the General Plan.

## **ANALYSIS**

The primary issue analyzed is conformance to Council Policy 6-20, Land Use Policy for Wireless Communications Antennas, which provides criteria for siting such facilities including location, setbacks from residential uses, and parking.

### Council Policy for Wireless Communications Antennas

The City of San José may allow installation of wireless communication antenna with a Conditional Use Permit to ensure such projects conform to the City requirements and are compatible with the surrounding neighborhood.

The proposed project will co-locate nine wireless communication antennae and associated equipment on an existing PG&E tower in a corridor for high-tension power lines exceeding 200 kilovolts. City Policy encourages co-location of new antenna on existing structures whenever possible

The project will provide amenities to offset the potential visual impacts associated with the project. Although PG&E's own requirements prevent the applicant from providing landscaping around the tower as normally required by Council policy, the applicant is housing the equipment shelter within a redwood fenced enclosure that is consistent with the perimeter fencing on the property. The applicant shall also contribute three 24-inch box trees to be planted within the City of San José by Our City Forest. Consistent with Council policy, the proposed project will not eliminate required parking.

The Council Policy requires building mounted antennas to be located to minimize visual impacts and to be architecturally integrated into the supporting structure. It also requires ancillary equipment to be screened. The proposed antennas are collocated on an existing PG&E tower that has existing overhead service lines. Although visible, the antennas will be painted to match the existing color of the utility tower and will not significantly add to the visual impacts created by the existing tower and overhead service lines on the site.

Per the draft update to the Land Use Policy for Wireless Communication Facilities, which has been recommended for approval by the Planning Commission and the Driving a Strong Economy Council Committee, new antennas mounted on existing PG&E Towers shall provide a minimum setback of 20 feet from properties used for residential purposes. The proposed antennas would be located approximately 30 feet from the nearest residentially zoned property, consistent with the proposed update to the Council Wireless Policy. The update reduces the residential setback requirement from 50 feet to 20 feet to encourage the co-location of new antennas on existing utility structures. The reduced setback is considered acceptable because there are minimal additional impacts for new antennas on existing PG&E towers.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public Park and Open Space on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review.
4. The project proposes the installation of nine wireless communication antennae on a PG&E tower and placement of associated equipment cabinet in a fenced enclosure.
5. The top of the wireless communication antennae will be located at a height not to exceed 101 feet on a PG&E tower.
6. The antennae will be painted to match the existing structure to minimize the visual impacts created by existing utility poles and overhead service lines on the site.
7. The project does not reduce the existing on-site parking.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

5. The proposed project appropriately locates wireless communication antennae in an existing PG&E corridor for high-tension lines exceeding 200 kilovolts.
6. The proposed project will not eliminate parking.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Hostetter PG&E Tower" dated May 27, 2002 on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24)
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
9. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP 03-050 shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

11. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
12. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
13. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
14. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
15. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
17. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
18. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PSC antennas for other providers. Future collocation that does not increase the height of the utility structure may be permitted through a permit adjustment at the discretion of the Planning Director.
19. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.
20. **Landscaping Mitigation.** Applicant shall contribute three 24-inch box trees to Our City Forest or the equivalent in fees to be used for tree planting.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

c: Building Division (2)  
Engineering Services  
Luke Stamos, Cingular Wireless, 2216 Alameda, Santa Clara Ca 95050  
Pacific Gas & Electric, Robert Schlegel, 77 Beale Street, San Francisco, CA 94105

Attachments